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TO RUEHC/SECSTATE WASHDC IMMEDIATE 6410
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RUEHJS/ASSOCIATION OF SOUTHEAST ASIAN NATIONS IMMEDIATE
RUEHBJ/AMEMBASSY BEIJING IMMEDIATE 6852
RUEHBY/AMEMBASSY CANBERRA IMMEDIATE 9512
RUEHUL/AMEMBASSY SEOUL IMMEDIATE 5341
RUEHKO/AMEMBASSY TOKYO IMMEDIATE 1460
RUEHCHI/AMCONSUL CHIANG MAI IMMEDIATE 6312
RUEAIIA/CIA WASHINGTON DC IMMEDIATE

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STATE FOR EAP/MLS, EEB/TPP/IPE
STATE PASS TO USTR FOR GROVES, BAE, WEISEL AND BISBEE
COMMERCE FOR EAP/MAC/OKSA
COMMERCE PASS TO USPTO
SINGAPORE FOR FINATT BAKER
TREASURY FOR SCHUN AND MNUGENT

SENSITIVE
SIPDIS

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TAGS: [ECON](#) [ETRD](#) [KIPR](#) [TH](#)
SUBJECT: SPECIAL 301 OUT-OF-CYCLE REVIEW FOR THAILAND

REF: A. BANGKOK 529 (SPECIAL 301 SUBMISSION)
[1](#)B. BANGKOK 379 (RIGHT MOVES ON IPR)
[1](#)C. STATE 8410 (SPECIAL 301 PROCESS)

FROM THE AMBASSADOR

[1](#)1. (SBU) I believe that a Special 301 out-of-cycle review (OCR) provides the best opportunity to work with the new Thai government to improve IPR protection sufficiently to move Thailand from the Priority Watch List to the Watch List. As noted in ref a, we believe that the annual review due in April should place Thailand again on the Priority Watch List, but an OCR is needed to give the new government the backing needed to continue to improve the IPR environment here. Otherwise, an important opportunity may be lost.

[1](#)2. (SBU) No one knows better than this embassy the frustrations encountered over the years trying to make meaningful progress in respect for IPR. Thailand has yet to fully shake off the idea that a country at its level of development "cannot afford" real IPR protection. We have worked with the Thai over the years to create a legal and regulatory regime that provides a framework, including the creation of a specialized IPR court, for dealing with IPR violations, only to have IPR judges predominantly dole out punishments so light that they do not serve as an effective deterrent. Numerous capacity-building training programs have been supported to develop technical expertise among concerned Thai officials, only to have their best intentions mitigated by other bureaucratic actors with different agendas. In the past two to three years, IPR violators have become more sophisticated, as political turmoil, lingering corruption, and a bevy of competing priorities have resulted in a deteriorating IPR situation despite significant capabilities. Thailand today has the capacity to be managing an IPR regime at least at the Watch List level. What has been lacking is political will.

[1](#)3. (SBU) The current government, led by Prime Minister Abhisit Vejjajiva, came to power at the end of 2008 and differs markedly from its several immediate predecessors. For the first time in recent memory, the political leadership has taken a keen and public stance on IPR. One of the handful of top Democrat Party leaders, Alongkorn Ponlaboot, has taken direct control of IPR matters. Almost immediately, the Abhisit government reached out to foreign business communities to promise improvements in the investment

climate, including IPR enforcement. As delineated in reftels, this government has, among other things, created a national IPR committee chaired by the Prime Minister, closed facilities making pirated goods, and announced a list of over 40 police officers guilty of IPR-related corruption. All told, the actions being taken by the Abhisit Government will lead to a meaningful improvement in respect for IPR -- if they can be sustained. The government itself is a fragile coalition, and the Democrat Party that leads it is counting on mounting accomplishments to garner public support sufficient to prevent political opportunists from seeking to bring it down. Making progress with the United States in the Special 301 process review is among the accomplishments it seeks.

¶4. (SBU) It is not our intention to give credit where it is not due. Thailand's IPR enforcement is still not where it should be, hence our recommendation that it remain on the Priority Watch List for now. However, we need to capitalize on the political will being demonstrated by the new government to move Thailand forward. Simply keeping Thailand on the PWL with no OCR would indicate to political skeptics that the new government's IPR initiatives were for naught. Promise of an interim review, perhaps in late summer, would send the message that the Abhisit government did the right thing in choosing to promote respect for IPR and demonstrate that the United States is a partner with which the Thai government can work. There is no obligation to upgrade Thailand to the Watch List as a result of the review; that will depend on Thailand's continuing to take meaningful action in IPR enforcement. But it is prudent to take advantage of this opportunity.

JOHN